IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 1ST MARCH 2007 / 10TH PHALGUNA 1928

Crl.MC.No. 2829 of 2006()

C.M.P.1824/06 IN CC.29/2000 of JUDL.MAGISTRATE OF FIRST CLASS, AMABALAPUZHA

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PETITIONER: ACCUSED

PREMKUMAR, S/O.PADMANABHA SHENAI,
THOTTUNGARA MADATHIL, KOMANA MURI,
AMBALAPUZHA PANCHAYAT WARD-11, AMBALAPUZHA VILLAGE

BY ADV. SRI.K.RAMAKUMAR

RESPONDENTS: COMPLAINANT

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1. STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

2. THE SUB INSPECTOR OF POLICE,
AMBALAPUZHA POLICE STATION.

ADDL.R3. JAYAKUMAR, S/O. NAGARAJ SHENOY
J.P. MADOM, 9TH WARD,
AMBALAPUZHA PANCHAYAT
AMBALAPUZHA.
(IMPLEADED AS PER ORDER DT.16.1.2007 IN CRL.M.A.5288/06 & 159/07)

BY ADV. SRI.V.SANTHARAM
SMT.SHIJA SHERIDAN
SRI.ANTO THOMAS
R1 & 2 BY PUBLIC PROSECUTOR SRI.S.U. NAZAR

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 01/03/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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Crl.M.C.No. 2829 of 2006

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Dated this the 1st day of March, 2007

O R D E R

The petitioner faces indictment in a prosecution under Section 409 I.P.C. Cognizance has been taken on the basis of the final report submitted by the police. Investigation commenced on the basis of a private complaint filed by the defacto complainant/third respondent herein, which was referred to the police under Section 156(3) Cr.P.C. The learned Magistrate framed charges and proceeded with the trial. After closing the evidence of the prosecution, the accused was examined under Section 313 Cr.P.C.

2. The crux of the allegation is that an amount of Rs.30,000/- belonging to Venugopala Devaswom, Purakkad, was mis-appropriated by the petitioner while he was the President of the Devaswom. It was alleged that an amount of Rs.30,000/- was shown as remitted to the bank in the books of account of the Devaswom allegedly maintained by the petitioner, but such amount was not actually paid to the bank account of the Devaswom.

3. The accused, in the course of S.313 examination, appears to have taken a stand that he is not the one who was competent to and charged with the responsibility of operating bank account. The consistent case of the prosecution was that it was the petitioner who had that responsibility. In view of the contention raised, the Prosecutor in charge of the case filed an application under Section 311 Cr.P.C. to examine the Manager of the Bank and prove certain relevant documents. That application under Section 311 Cr.P.C. was considered by the learned Magistrate and the request was granted under the impugned order produced as Annex.A. That order was passed as early as on 8.5.2006. Long later, this Crl.M.C. has been filed on 12.9.2006 raising a contention that invocation of the powers under Section 311 Cr.P.C. results in failure/miscarriage of justice. It is contended that the prosecution is contemplating only to fill up the lacuna in its case and such permission granted to the prosecution to fill up such lacuna amounts to abuse of process of the court and leads to failure/miscarriage of justice.

4. The learned counsel for the petitioner, the learned counsel for the defacto complainant and the learned Public Prosecutor have all been heard. The short question to be considered is, whether powers under Section 482 Cr.P.C. can or ought to be invoked in the facts and

circumstances of this case to interfere with the impugned order passed under Section 311 Cr.P.C.

5. It will be apposite in this context to advert to the sweep and width of the powers of the Court under Section 311 Cr.P.C. It is unnecessary to advert various precedents. Perhaps the last one in the point is in **U.T. of Dadra & Nagar Haveli v. Fatehsinh Mohansinh Chauhan** ((2006) 7 SCC 529). The court trying a case has the complete jurisdiction to act in aid of justice. Section 311 Cr.P.C. recognises such power of the court to act ex debito justitiae. In a case where conscience of the court is satisfied that further evidence can and ought to be adduced, the powers can be invoked unless such invocation results in prejudice to the accused or miscarriage or failure of justice. In the facts and circumstances of the case that I have already referred to, I find absolutely nothing wrong in the learned Magistrate invoking the power under Section 311 Cr.P.C. The consistent case of the prosecution was that it was the petitioner/accused, who was responsible for maintenance of the account as also for operation of the bank account. By abundant caution such an application has been filed and the learned Magistrate has thought it fit to invoke his powers under Section 311 Cr.P.C. Following the principles in the decision referred above in

Fatehsinh Mohansinh Chauhan, it cannot be said that the prosecution is engaged in an attempt to unjustifiably fill in any lacuna in its case.

6. It will also be apposite for this court to remind itself of the nature quality and contours of jurisdiction of this Court under Section 482 Cr.P.C. Only when justice fails can this court invoke its powers under Section 482 Cr.P.C. I am not at all persuaded to agree that any such vice results from the impugned order granting the request under Section 311 Cr.P.C. It follows that the impugned order does not warrant any interference under Section 482 Cr.P.C.

7. This Crl.M.C. is hence dismissed.

(R. BASANT)
Judge

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